



Linda S. Adams
*Secretary for
Environmental Protection*

State Water Resources Control Board

Executive Office

Charles R. Hoppin, Chairman
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Arnold Schwarzenegger
Governor

DEC 30 2009

Mr. Michael Jewell, Chief
Regulatory Branch
Sacramento District
U. S. Army Corps of Engineers
1325 J. Street
Sacramento, CA 95814

Dear Mr. Jewell

**CLEAN WATER ACT (CWA) SECTION 401 WATER QUALITY CERTIFICATION FOR
REGIONAL GENERAL PERMIT 60 (RGP 60) FOR REPAIR AND PROTECTION ACTIVITIES
IN EMERGENCY SITUATIONS (CORPS FILE # 199700652, SWRCB FILE # SB09012GN)**

On December 1, 2009, the United States Army Corps of Engineers (USACE) requested that the State Water Resources Control Board (State Water Board) issue a CWA Section 401 Water Quality Certification (Certification) for RGP 60 for "Repair and Protection Activities in Emergency Situations. State Water Board staff reviewed the information submitted by USACE describing the project activities and the proposed water quality protection measures.

The State Water Board is responsible for permitting projects that extend into more than one Regional Water Quality Control Board. Consultations regarding the RGP 60 and this Certification were conducted with the Lahontan Regional Water Quality Control Board, Central Valley Regional Water Quality Control Board, and U.S. Army Corps of Engineers. This Certification will allow the Sacramento District (District) of the USACE to issue RGP 60 permits without separate Section 401 certifications for each project as long as those projects meet the conditions of RGP 60 and this Certification.

Pursuant to Title 23, section 3838 of the California Code of Regulations, hereby make the Certification determination described in Enclosure 1 for these projects.

The following additional information is part of this Certification:

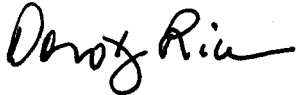
Enclosure 1: Regional General Permit 60 Certification;
Attachment A: Applicant's Project Description
Attachment B: Project Information Sheet
Attachment C: 48-hour Notification Form
Attachment D: Final Report Form
Attachment E: Signatory Requirements

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If you require further assistance, please contact Catherine Woody, the staff person most knowledgeable on the subject, at (916) 341-5785 (CWoody@waterboards.ca.gov). You may also contact Bill Orme, Chief of the 401 Certification and Wetlands Protection Unit, at (916) 341-5464 (borme@waterboards.ca.gov).

Sincerely,



Dorothy Rice
Executive Director

Enclosure 1: Certification Order
Attachments: (5)

cc: Ms. Angela L.D. Conn
Regulatory Branch
Sacramento District
U. S. Army Corps of Engineers
1325 J. Street
Sacramento, CA 95814

Mr. Dave Smith, Chief
Wetlands Regulatory Office
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Ms. Pamela C. Creedon, Executive Officer
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114

Mr. Harold J. Singer, Executive Officer
Lahontan Regional Water Quality Control Board
2501 Lake Tahoe Blvd
South Lake Tahoe, CA 96150

Dr. Jeffrey R. Single, Regional Manager
California Department of Fish and Game
Central Region
1234 E. Shaw Ave.
Fresno, CA 93710

cc: (See next page)

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cc: (Continuation page):

cc: Mr. Kent Smith, Regional Manager
California Department of Fish and Game
1701 Nimbus Road
Rancho Cordova, CA 95670

Mr. Gary Stacey, Regional Manager
California Department of Fish and Game
Northern Region
601 Locust Street
Redding, CA 96001

Ms. Michelle Tovar
U.S. Fish and Wildlife Service
2800 Cottage Way, Room W2605
Sacramento, CA 95825-1846

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Governor

**ACTION ON REQUEST FOR CLEAN WATER ACT SECTION 401
WATER QUALITY CERTIFICATION FOR REGIONAL GENERAL PERMIT 60 FOR REPAIR
AND PROTECTION ACTIVITIES IN EMERGENCY SITUATIONS
FILE NO. SB09012GN**

PROJECT: Regional General Permit 60 (RGP 60) for Repair and Protection Activities in
Emergency Situations (Corps File No. 199700652)

APPLICANT: Mr. Michael Jewell, Chief
Regulatory Branch
Sacramento District
U.S. Army Corps of Engineers
1325 J Street
Sacramento, CA 95814

This Order responds to your request for Water Quality Certification for the subject project. This certification is intended to streamline the approval process for dredge and fill activities necessary to prevent an emergency.

ACTION

- | | |
|--|--|
| <input type="checkbox"/> Order for Standard Certification | <input type="checkbox"/> Order for Denial of Certification |
| <input checked="" type="checkbox"/> Order for Technically Conditioned
Certification | <input type="checkbox"/> Order for Waiver of Waste Discharge
Requirements |

STANDARD CONDITIONS:

- 1 This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 of the California Water Code and Article 6 (commencing with section 3867) of Chapter 28, Title 23 of the California Code of Regulations.
- 2 This certification action is not intended and shall not be construed to apply to any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to subsection 3855(b) of Chapter 28, Title 23 of the California Code of Regulations, and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

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3. This Certification is conditioned upon total payment of any fee required under Chapter 28, Title 23 of the California Code of Regulations and owed by the applicant.

ADDITIONAL CONDITIONS:

1. Emergency Definition

This Certification is limited to emergency actions that meet the California Environmental Quality Act (CEQA) (Public Resources Code, § 21000 et seq.) definition of an "emergency," which is defined as follows:

A sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, or other soil or geologic movement, as well as such occurrences as riot, accident, or sabotage.

[Public Resources Code, § 21060.3 (emphasis added).]

Projects must meet the above definition of "emergency" and demonstrate an imminent threat to qualify for this water quality certification. For non-emergency projects, the applicant must contact either the State Water Resources Control Board (State Water Board) or the applicable Regional Water Quality Control Board (Regional Water Board) (collectively, Water Boards) to apply for an individual water quality certification.

2. Emergency Exemption Criteria

This Certification is limited to projects that satisfy one or more of the following exemption criteria as defined by the CEQA Guidelines [California Code of Regulations., Title 14, § 15269]:

- a. Projects to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to the California Emergency Services Act, commencing with section 8550 of the Government Code.
- b. Emergency repairs to publicly or privately owned service facilities necessary to maintain service essential to the public health, safety, or welfare.
- c. Specific actions necessary to prevent or mitigate an emergency. This does not include long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short-term.
- d. Projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, provided that the project is within the existing right of way of that highway and is initiated within one year of the damage occurring. This does not apply to highways designated as official State scenic highways, nor any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.



- e. Seismic work on highways and bridges pursuant to section 180.2 of the Streets and Highways Code, section 180 et seq.

3. Scope and Time Frame

This Certification is limited **only** to sudden, unexpected emergency situations defined in Additional Conditions 1 and 2 above that: (1) have occurred, or (2) have a high probability of occurring in the short term as a result of recently discovered factors or events not related to known or expected conditions. Additionally, the sudden, unexpected emergency situation must have the potential to result in an unacceptable hazard to life or a significant loss of property if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures.

Emergency repairs and reconstruction must begin within seven (7) calendar days of receiving authorization to proceed and shall be completed within one year of enrollment pursuant to this water quality certification. There may be limited circumstances in which, after notice to and input by the agencies, logistical considerations necessitate an extension of between 1 and 7 days. All repairs and reconstruction shall be kept to the minimum necessary to alleviate the immediate emergency and limited to in-kind replacement or refurbishment of on-site features. Minor upgrading may be considered if the applicant uses bioremediation or other environmentally sensitive solutions. Permanent restoration work other than that performed as an associated part of the emergency operations, including any minor upgrades, shall not be performed without prior approval and authorization by the Water Boards.

4. Forty-Eight Hour Notification

The prospective permittee must notify the State Water Board and the applicable Regional Water Board at least 48 hours prior to initiating the emergency project, if feasible. Feasibility is to be determined by the State Water Board or the applicable Regional Water Board. This notification must be followed within three (3) business days by submission of all of the information in the 48-hour emergency notification form, provided in Attachment C.

The Water Boards recognize there may be situations where imminent threats to life or property occur and the applicant has not received a notice to proceed. If immediate, specific actions, as defined in the California Code of Regulations, Title 14, section 15269(c), are required by an applicant and prior notice to the State Water Board and the applicable Regional Water Board is not possible, then the applicant must contact the State Water Board and the applicable Regional Water Board within one (1) business day of the action. As provided above, this notification must be followed within three (3) business days by submission of all of the information in the 48-hour emergency notification form, provided in Attachment C.

Notification may be via telephone, facsimile, e-mail, delivered written notice, or other verifiable means.

- A staff directory that includes contact information for the State and Regional Water Boards is found at:
http://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/staffdirectory.pdf
- For State Water Board, fax to (916) 341-5584 (Attn: DWQ 401 Unit), or leave a message at (916) 341-5506 (Regulatory Office).
- For Regional Water Board map boundaries, see
<http://maps.waterboards.ca.gov/webmap/rbbound.html>

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5. Water Quality Standards Maintained

Permitted activities must not cause a violation of any applicable water quality standards, including impairment of designated beneficial uses for receiving waters as adopted in the Water Quality Control Plan (Basin Plan) by a Regional Water Board or the State Water Board. The Water Boards may impose monitoring requirements in order to ensure that permitted discharges and activities comport with any applicable water quality standards and/or effluent limitations.

6. Other Permits May Be Required

This Certification does not obviate the need to obtain other permits that may be required by federal, state, or local authorities.

7. California Endangered Species Act

Permitted activities shall not result in the taking of any State endangered species, threatened species, or candidate species, or the habitat of such a species unless the activity is authorized by the California Department of Fish and Game pursuant to a permit, memorandum of understanding, or other document or program in accordance with Fish and Game Code sections 2081, 2081.1, or 2086.

8. Compliance

Failure to comply with any condition of this Certification shall constitute a violation of the Clean Water Act and the Porter-Cologne Water Quality Control Act. Any such certification previously granted shall immediately be revoked, and any or all discharges shall cease. The permittee may then be subject to administrative and/or civil liability pursuant to Water Code section 13385.

9. Project Fees

The prospective permittee must provide to the State Water Board a fee for review and processing of the notice (Attachment C) in accordance with California Code of Regulations, Title 23, section 2200 (\$77.00 as of October, 2008; this amount is subject to change) within 48 hours of project initiation. Failure to promptly pay the correct fee amount may result in an inability to be enrolled pursuant to this water quality certification.

10. Final Report

The permittee must provide the State Water Board and the applicable Regional Water Board copies of all correspondence and reports that are submitted to the U.S. Army Corps of Engineers to satisfy the requirements of RGP 60. In addition, the permittee must fill in and submit the form provided in Attachment D. This information must be sent to the following addresses within 45 calendar days of completion of any action conducted under RGP 60:

Bill Orme, Chief
CWA Section 401 WQC Program
Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

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CWA Section 401 WQC Program

(Address of appropriate Regional Water Board, obtained from:

http://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/staffdirectory.pdf)

Failure to submit Attachment D within 45 calendar days of completion of any action conducted under this water quality certification may result in the imposition of administrative and/or civil liability pursuant to Water Code section 13385.

STATE WATER BOARD CONTACT PERSON:

If you have any questions, please contact State Water Board Environmental Scientist Catherine Woody at (916) 341-5785 (CWoody@waterboards.ca.gov). You may also contact Bill Orme, Chief of the 401 Certification and Wetlands Protection Unit, at (916) 341-5464 (borme@waterboards.ca.gov).

WATER QUALITY CERTIFICATION:

I hereby issue an order certifying that any discharge from the referenced project will comply with the applicable provisions of Clean Water Act sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards), if all of the conditions listed in this certification action are met. This discharge is also regulated pursuant to State Water Board Water Quality Order No. 2003-0017-DWQ, which authorizes this certification to serve as Waste Discharge Requirements pursuant to the Porter-Cologne Water Quality Control Act (Water Code, § 13000 et seq.).

Except insofar as may be modified by any preceding conditions, all certification actions are contingent on: (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the applicant's project description (Attachment A) and the enclosed Project Information Sheet (Attachment B), and (b) compliance with all applicable requirements of the Regional Water Board's Water Quality Control Plan.

Dorothy Rice

Dorothy Rice, Executive Director
State Water Resources Control Board

12.29.09

Date

- Attachments (5):
- A. Applicant's Project Description
 - B. Project Information Sheet
 - C. 48-hour Notification Form
 - D. Final Report Form
 - E. Signatory Requirements

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